

Who Lacks Voter ID?: Evidence from Expert Reports

By JOSHUA HOCHBERG*

Introduction

OVER THE PAST TWO DECADES, VOTER IDENTIFICATION (“ID”) LAWS have become one of the most hot-button issues in American politics.¹ Recent legislative activity suggests this intensity will not cool soon, as new voter ID laws have been enacted in Arkansas,² Florida,³ Georgia,⁴ Montana,⁵ and Wyoming.⁶

* B.A. Candidate, Department of Political Science, Tufts University, Class of 2022. I thank Brian Remlinger, Jonathan Robinson, Professor Brian Schaffner, and the Tufts Public Opinion Lab for many beneficial conversations. I am grateful to Emma Winey, and Meredith Schwartz for feedback on early drafts of this Comment. I thank Professor Eitan Hersh for his feedback and guidance. I am indebted to the USF Law Review editors—especially Amy Metzgar, Alegna Gómez, Matt Toscano, and Laura Odujinrin—for their excellent edits and suggestions.

1. See Michael D. Gilbert, *The Problem of Voter Fraud*, 115 COLUM. L. REV. 739, 746 (2013) (“Voter-identification laws . . . have provoked a fierce controversy in politics and public law”); Ryan Chatelain, *Debate over Photo ID Laws is Enduring - and Complex*, SPECTRUM NEWS (July 15, 2021, 11:44 AM), <https://www.nyl.com/nyc/all-boroughs/politics/2021/07/14/debate-over-photo-voter-id-laws-enduring-and-complex> [https://perma.cc/R4HS-TBZA]; Chris Cillizza, *Voter ID Requirements Are Really Popular. So Why Are They So Divisive?*, CNN POL. (June 25, 2021, 11:53 AM), <https://www.cnn.com/2021/06/25/politics/voter-id-election-law-voting-rights/index.html> [https://perma.cc/BJE5-V9S8].

2. H.B. 1112, 93d Gen. Assemb., Reg. Sess. (Ark. 2021); see also *Voting Laws Roundup: July 2021*, BRENNAN CTR. FOR JUSTICE, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-july-2021> [https://perma.cc/Y3MU-NUC9].

3. S.B. 90, 2020–22 Leg., Reg. Sess. (Fla. 2021); see also Kelly Meena, Caroline Kelly & Fredreka Schouten, *Florida Gov. Ron DeSantis Signs Restrictive Voting Bill*, CNN NEWS (May 6, 2021, 4:17 PM), <https://www.cnn.com/2021/05/06/politics/desantis-signs-florida-bill-voting-restrictions/index.html> [https://perma.cc/EM76-X58C].

4. S.B. 202, 156th Gen. Assemb., Reg. Sess. (Ga. 2021); see also Adam Brewster & Caitlyn Huey-Burns, *What Georgia’s New Voting Law Really Does*, CBS NEWS (Apr. 7, 2021, 12:33 PM), <https://www.cbsnews.com/news/georgia-voting-law-9-facts/> [https://perma.cc/KV3C-H75Z].

5. S.B. 169, 67th Leg., Reg. Sess. (Mont. 2021); see also Eric Dietrich, *Where Legal Challenges to New Laws Stand Now*, MONT. FREE PRESS (Aug. 10, 2021), <https://montanafreepress.org/2021/08/10/where-legal-challenges-to-new-montana-laws-stand-now/> [https://perma.cc/M42V-B5AW].

6. H.B. 75, 66th Leg., Reg. Sess. (Wyo. 2021); see also Cameron Jenkins, *Wyoming Governor Signs Voter ID Bill*, THE HILL (Apr. 8, 2021, 4:44 PM), <https://thehill.com/homenews/state->

Similar legislation is pending in more than a dozen states,⁷ including efforts to enact voter ID laws via statewide ballot measures in Nebraska⁸ and Pennsylvania.⁹

For nearly twenty years, Democrats and civil rights groups have opposed voter ID laws, arguing that the laws disproportionately burden people of color.¹⁰ The North Carolina NAACP President said voter ID laws are “the worst suppression since Jim Crow.”¹¹ Then-Vice President Joe Biden suggested that voter ID laws in southern states are “evidence of lingering racism.”¹² Senator Elizabeth Warren called voter ID laws “racist.”¹³ The tendency to view voter ID laws as racially discriminatory is valid because not only does America have a dark history of disenfranchising people of color via the imposition of poll taxes, literacy tests, and even violence,¹⁴ but recent empirical scholarship has identified the role of race in the enactment of voter ID laws.¹⁵ A 2013 study

watch/547234-wyoming-governor-signs-voter-id-bill [https://perma.cc/984G-2W88].

7. *Voting Laws Roundup: July 2021*, *supra* note 2.

8. See Grant Schulte, *Nebraska Voter ID Ballot Drive Begins Gathering Signatures*, AP NEWS (Aug. 6, 2021), <https://apnews.com/article/nebraska-election-2020-9ba8eccb851a59538a03e7ced3db8aca> [https://perma.cc/5H5G-RZEA].

9. See Candy Woodall, *Pa. Republicans to Put Voter ID on Ballot After Gov. Wolf Vetoes Voting Reform Bill*, GO ERIE NEWS (June 30, 2021, 1:17 PM), <https://www.goerie.com/story/news/2021/06/30/pa-republicans-voter-id-ballot-gov-wolf-veto-reform-bill/7811507002/> [https://perma.cc/H9LJ-RX25].

10. See, e.g., Cillizza, *supra* note 1 (“Democrats say it’s a not-so-subtle attempt to discourage minority voters to cast a ballot.”); Stephanie Condon, *Democrats Push Back Against Voter ID Laws*, CBS NEWS (May 17, 2012, 4:42 PM), <https://www.cbsnews.com/news/democrats-push-back-against-voter-id-laws/> [https://perma.cc/Y56W-6DHZ] (detailing how Congressional Democrats and the 2012 Obama campaign sought to combat voter ID laws); Nicholas A. Valentino & Fabian G. Neuner, *Why the Sky Didn’t Fall: Mobilizing Anger in Reaction to Voter ID Laws*, 38 POL. PSYCHOL. 331, 333 (2017) (“Civil rights leaders have rallied, loudly characterizing them [voter ID laws] as a Jim Crow style war on Black voter access to the ballot.”).

11. Ed Pilkington, *North Carolina Voter Law Challenged: “The Worst Suppression Since Jim Crow”*, THE GUARDIAN (July 6, 2014, 10:46 AM) <https://www.theguardian.com/world/2014/jul/06/north-carolina-voter-id-jim-crow-challenge> [https://perma.cc/E9QB-CLF8] (quoting Reverend William Barber, President of the North Carolina NAACP).

12. Rebecca Kaplan, *Joe Biden Sees Lingering “Hatred” in Voter ID Laws*, CBS NEWS (Feb. 26, 2014, 1:02 PM), <https://www.cbsnews.com/news/joe-biden-sees-lingering-hatred-in-voter-id-laws/> [https://perma.cc/8ZTP-VWVU].

13. Elizabeth Warren (@ewarren), TWITTER (May 15, 2018, 5:21 PM), <https://twitter.com/ewarren/status/996500862494232578> [https://perma.cc/K8GC-LZHF].

14. Ryan A. Partelow, *The Twenty-First Century Poll Tax*, 47 HASTINGS CONST. L.Q. 425, 427–431 (2020) (discussing how Southern states employed poll taxes, literacy tests, grandfather clauses, white primaries, and violence to prevent otherwise-eligible Black voters from voting); John E. Filer, Lawrence W. Kenny & Rebecca B. Morton, *Voting Laws, Educational Policies, and Minority Turnout*, 34 J.L. & ECON. 371, 372–375 (1991) (detailing policies enacted to disenfranchise Black voters).

15. Keith G. Bentele & Erin E. O’Brien, *Jim Crow 2.0? Why States Consider and Adopt*

examining the introduction of voter ID laws in state legislatures found that an increase in minority turnout in the previous election is associated with more proposed voter ID legislation.¹⁶ This study also found that an increase in minority turnout is associated with the enactment of voter ID laws.¹⁷ A similar study revealed that the size of a legislative district's black population positively influences the probability that a Republican legislator will vote in favor of a voter ID law.¹⁸ Additionally, voter ID laws are not implemented in a race-neutral manner. Poll workers, for example, are more likely to ask voters of color to present their voter ID than white voters.¹⁹

Democrats and civil rights organizations have acted swiftly to challenge voter ID laws in state and federal courts.²⁰ The ACLU has fought against these discriminatory voter ID laws in Pennsylvania, Arkansas, Wisconsin, and North Carolina, among others.²¹ Despite frequent litigation and much consternation, how much voter ID laws disproportionately burden voters of color has yet to be definitively answered.²²

In Part I, this Comment surveys the extant literature on the burden imposed by voter ID laws, demonstrating that scholars have yet to reach a consensus on this issue. The lack of consensus is partly due to significant flaws in the underlying data and the methodological flaws of the various approaches social scientists take.²³

In Part II, this Comment reviews a unique source of data—expert reports that match registered voters to state and federal ID databases—and synthesizes the reports to evaluate if voters of color are less likely to possess a voter ID

Restrictive Voter Access Policies, 11 PERSPS. ON POL. 1088, 1094 (2013).

16. *Id.* at 1096.

17. *Id.* at 1100.

18. Seth C. McKee, *Politics Is Local: State Legislator Voting on Restrictive Voter Identification Legislation*, 2 RSCH. & POL. 1, 6 (2015); see also William D. Hicks, Seth C. McKee & Daniel A. Smith, *The Determinants of State Legislator Support for Restrictive Voter ID Laws*, 16 STATE POL. & POL'Y Q. 411 (2016).

19. Rachael V. Cobb, D. James Greiner & Kevin M. Quinn, *Can Voter ID Laws Be Administered in a Race-Neutral Manner? Evidence from the City of Boston in 2008*, 7 QJ. POL. SCI. 1, 21 (2012).

20. Jenna Portnoy, *Virginia Voter ID Lawsuit is Part of National Push by Democrats*, WASH. POST (Jan. 1, 2016), https://www.washingtonpost.com/local/virginia-politics/virginia-voter-id-lawsuit-is-part-of-national-push-by-democrats/2016/01/01/d08f08fe-af3e-11e5-b820-eea4d64be2a1_story.html [<https://perma.cc/9PAE-HSEQ>].

21. *Oppose Voter ID Legislation: Fact Sheet*, ACLU, <https://www.aclu.org/other/oppose-voter-id-legislation-fact-sheet> [<https://perma.cc/YZ43-BA7B>].

22. See generally *infra* Part I (discussing how multiple sources of literature on voter ID laws, regardless of approach, are unable to definitively and consistently prove a disproportionate burden these laws impose on people of color).

23. See *infra* Part IA.

than white voters. This approach improves upon the existing methodological approaches because it is more precise and can be used to focus on likely voters, as opposed to all registered voters (a crucial distinction discussed in Part D). Ultimately, this Comment finds that voters of color are less likely to possess a voter ID than white voters; however, the gap between likely white voters and likely voters of color is slim.

In Part III, this Comment explains our understanding of voter ID laws and suggests that the findings can help explain recent legislative activity.

I. Extant Literature on Voter ID Laws

This Part synthesizes the extant literature on whether voter ID laws disproportionately burden voters of color. It begins by reviewing the causal literature's findings, limitations, and then does the same of the descriptive literature. It concludes by briefly introducing an alternative approach, which is the focus of Part II.

A. Causal Literature

Social scientists view identifying causal relationships as a high priority.²⁴ Consequently, many have sought to quantify the impact of voter ID laws through this approach.²⁵

Most scholarly works employing this approach fail to conclude that voter ID laws decrease minority turnout relative to white turnout. In a study that looked at strict voter ID laws from 2008–2012, economists Enrico Cantoni and Vincent Pons employ a difference-in-difference design on a panel dataset with more than 1.5 billion observations and find no evidence that voter ID laws disproportionately decrease Black and Hispanic turnout.²⁶ Other studies analyzing both national and state-level turnout came to the similar conclusions.²⁷ However, some scholars leveraging large-scale surveys and county-level

24. Margaret Mooney Marini & Burton Singer, *Causality in the Social Sciences*, 18 SOCIO. METHODOLOGY 347, 347 (1988).

25. See, e.g., Benjamin Highton, *Voter Identification and Turnout in the United States*, 20 ANN. REV. POL. SCI. 149 (2017); Shelley de Alth, *ID at the Polls: Assessing the Impact of Recent State Voter ID Laws on Voter Turnout*, 3 HARV. L. & POL. REV. 185 (2009).

26. Enrico Cantoni & Vincent Pons, *Strict ID Laws Don't Stop Voters: Evidence from a U.S. Nationwide Panel, 2008–2012*, 136 Q. J. ECON. 2615, 2643 (2021) (“The bottom line is that strict ID laws did not decrease the participation of any race group.”). See also *id.* at 2653. (“[W]e do not find any negative effect on overall turnout and registration rates or on any group defined by race, age, gender, or party affiliation.”).

27. See Lauren R. Heller, Jocelyne Miller & E. Frank Stephenson, *Voter ID Laws and Voter Turnout*, 47 ATL. ECON. J. 147, 155 (2019) (finding that, when including state fixed effects, the authors cannot conclude that voter ID laws disproportionately decrease Black and Hispanic turnout);

turnout data come to the opposite conclusion, asserting voter ID laws decrease minority turnout relative to white turnout.²⁸

Methodological flaws severely constrain the causal literature and prevent scholars from reaching definitive conclusions. Many studies on voter ID laws, and turnout more broadly, rely on self-reported turnout from the Current Population Survey (“CPS”).²⁹ However, a recent article calls into question the validity of CPS data, concluding that there is “a serious bias in the CPS turnout estimates, one that has significant consequences for the inferences we make about racial/ethnic disparities in turnout rates.”³⁰ While other studies use self-reported turnout from the Congressional Cooperative Election Survey (“CCES”), scholars have noted that the survey is not representative of those lacking photo ID.³¹ While nationally representative of the American adult population, the CCES is unlikely to be representative of those who lack voter ID.³² To overcome the obstacles imposed by survey research, other studies have instead used aggregate turnout as their dependent variable.³³ However, this approach also has significant flaws, including a failure to employ clustered

M.V. Hood III & Charles S. Bullock III, *Much Ado About Nothing? An Empirical Assessment of the Georgia Voter Identification Statute*, 12 STATE POL. & POL’Y Q. 394, 409 (2012) (noting that Georgia’s voter ID law did not disproportionately decrease minority turnout); R. Michael Alvarez, Delia Bailey & Jonathan Katz, *The Effect of Voter Identification Laws on Turnout* 1, 21 (Cal. Instit. of Tech. Soc. Sci. Working Paper, Paper No. 1267R, 2008) (“However, we find no evidence to support the hypothesis that this effect is more profound for non- White registered voters.”).

28. See, e.g., Zoltan Hajnal, Nazita Lajevardi & Lindsay Nielson, *Voter Identification Laws and the Suppression of Minority Votes*, 79 J. POL. 363, 368 (2017); John Kuk, Zoltan Hajnal & Nazita Lajevardi, *A Disproportionate Burden: Strict Voter Identification Laws and Minority Turnout*, POL., GRPS. & IDENTITIES (2020).

29. Stephen Ansolabehere, Bernard L. Fraga & Brian F. Schaffner, *The CPS Voting and Registration Supplement Overstates Minority Turnout*, J. POL. (forthcoming 2021) (“Researchers have long relied on the CPS’s Voting and Registration Supplement as an authoritative source of data on turnout in the U.S.”); Alvarez, Bailey & Katz, *supra* note 27, at 11 (“In particular, we use a multilevel model – also referred to as a random effects model – to assess how voter identification requirements affect participation by registered voters, using data from four years of recent CPS Voter Supplement data.”).

30. Ansolabehere, *supra* note 29.

31. See Justin Grimmer et al., *Obstacles to Estimating Voter ID Laws’ Effect on Turnout*, 80 J. POL. 1045, 1050–51 (2018) (“But the CCES data are poorly suited to estimate state-level turnout for several reasons Unless a survey is oversampling citizens from small states and minority populations, many state-level turnout estimates, particularly for minorities, will be extremely noisy.”).

32. *Id.* (“The kind of person who lacks an ID is unlikely to be accurately represented in the opt-in, online CCES.”).

33. See Heller, Miller & Stephenson, *supra* note 27, at 149 (“We estimated models of voter turnout for the total number of voters as a percentage of those registered, as well as the number of African American and Hispanic voters as a percentage of those registered, in federal elections using state level data from 2000 to 2014.”); see Alvarez, Bailey & Katz, *supra* note 27.

standard errors and significant variations in voter turnout across states.³⁴ In sum, the causal literature on the racially disparate burden of voter ID laws has yet to reach a definitive conclusion and is hampered by methodological flaws.

B. Descriptive Literature

Many scholars have eschewed the causal approach described above and instead resort to a descriptive approach and survey the electorate to determine whether voters of color are less likely to possess a voter ID than white voters. In contrast to the causal literature that produces mixed results, the descriptive literature reaches a definitive conclusion. The descriptive literature finds that Black and Hispanic registered voters are less likely to possess a valid ID than white registered voters.

Research at the national level reveals that white registered voters are more likely to possess a voter ID than Hispanic and Black registered voters. A survey of the general U.S. population, for example, found that 93 percent of white registered voters had an ID, compared to 79 percent of Blacks and 90 percent of Hispanics.³⁵ Similarly, a survey of registered voters in Wisconsin, Indiana, Pennsylvania, and Texas found that White registered voters were nine and six percentage points more likely to possess a voter ID than their Black and Hispanic counterparts, respectively.³⁶ Research on ID possession rates in specific states have come to similar conclusions.³⁷

However, the descriptive literature suffers from constraints that cast doubt on its reliability. First, research on voters who lack ID is imprecise because a small amount of people lack voter ID. Second, surveys can fail to accurately capture ID possession rates by race because respondents either do not know, lie, or are confused about whether or not they have a valid photo ID.³⁸ A 2014 study reported that the majority of registered voters who cited a

34. See Robert S. Erickson & Lorraine C. Minnite, *Modeling Problems in the Voter Identification-Voter Turnout Debate*, 8 ELECTION L.J. 85 (2009).

35. Charles Stewart III, *Voter ID: Who Has Them? Who Shows Them?*, 66 OKLA. L. REV. 21, 41 (2013).

36. Matt A. Barreto, Stephen A. Nuño, Gabriel R. Sanchez & Hannah L. Walker, *The Racial Implications of Voter Identification Laws in America*, 47 AM. POL. RSCH. 238, 247 (2019).

37. Matt A. Barreto, Stephen A. Nuño, Gabriel R. Sanchez, *The Disproportionate Impact of Voter-ID Requirements on the Electorate—New Evidence from Indiana*, 42 PS: POL. SCI. & POL. 111, 113 (2009); MATT A. BARRETO, RATES OF POSSESSION OF VALID PHOTO IDENTIFICATION, AND PUBLIC KNOWLEDGE OF THE VOTER ID LAW IN PENNSYLVANIA 28 (2012), <https://www.pubintlaw.org/wp-content/uploads/2012/05/Voter-ID-expert-report-Matt-Barreto.pdf> [<https://perma.cc/B7RV-E22D>]; Report of Matt A. Barreto at 20, *Frank v. Walker*, No. 2:11-cv-01128 (E.D. Wis. Apr. 23, 2012); Report of Matt Barreto & Gabriel Sanchez at 19, *Veasey v. Perry*, No. 2:13-cv-00193 (S.D. Tex. June 27, 2014).

38. This is not limited to survey research. A recent study of voters who voted by signing an

lack of voter ID as a reason for not voting in the most recent election actually possessed a voter ID.³⁹ A similar study in 2016 found that more than 95 percent of nonvoters claiming a lack of voter ID actually had a voter ID.⁴⁰ Finally, surveys do not reveal the number of likely voters who do not have an acceptable form of voter ID. When surveys include non-likely voters, they fail to demonstrate how many people are burdened “in the sense that they would vote in the absence of an identification requirement.”⁴¹ Registered voters without a valid ID are significantly less likely to vote than those with an ID, even before a voter ID law was enacted.⁴²

Thus, neither turnout data nor survey research are well-equipped to accurately capture the burden imposed by voter ID laws on voters of color. One potential approach to quantify the disparate burden imposed by voter ID laws is to match registered voters to ID databases. However, federal law generally prohibits researchers from accessing these databases, and the lack of a centralized database renders such a matching process difficult.⁴³ During voter ID litigation, however, expert witnesses are given access to state and federal databases to determine how many registered voters lack an allowable form of voter ID. To date, the methodology and findings of these experts have not been discussed in the academic literature, except as discussed in Part III.⁴⁴

affidavit (an option allowed in some states for those who do not have a voter ID) found that more than 95% possessed a voter ID. See Phoebe Henninger, Marc Meredith & Michael Morse, *Who Votes Without Identification? Using Individual-Level Administrative Data to Measure the Burden of Strict Voter Identification Laws*, 18 J. EMPIRICAL LEGAL STUD. 256 (forthcoming 2021).

39. BILL HOBBY, MARK P. JONES, JIM GRANATO & RENÉE CROSS, *THE TEXAS VOTER ID LAW AND THE 2014 ELECTION: A STUDY OF TEXAS'S 23RD CONGRESSIONAL DISTRICT 7* (Univ. of Hous. Hobby Ctr. for Pub. Pol'y, 2015), <https://www.bakerinstitute.org/media/files/files/e0029eb8/Politics-VoterID-Jones-080615.pdf> [<https://perma.cc/8FNLJ4LJ>].

40. MARK P. JONES, RENÉE CROSS & JIM GRANATO, *THE TEXAS VOTER ID LAW AND THE 2016 ELECTION: A STUDY OF HARRIS COUNTY AND CONGRESSIONAL DISTRICT 23* (UNIV. OF HOUS. HOBBY SCH. OF PUB. AFFS. 16 (Apr. 2017), <https://uh.edu/hobby/voterid2016/voterid2016.pdf> [<https://perma.cc/HSP6JA6G>].

41. Daniel J. Hopkins, Marc Meredith, Michael Morse, Sarah Smith & Jesse Yoder, *Voting but for the Law: Evidence from Virginia on Photo Identification Requirements*, 80 J. EMPIRICAL LEGAL STUD. 79, 80 (2017).

42. Hood III & Bullock III, *supra* note 27, at 402 (finding that registered voters in Georgia who did not have a drivers' license were less likely to vote in previous elections than registered voters with a license).

43. See Stewart, *supra* note 35, at 23–24.

44. David A. Marker, *The Statistical Role in Voter Identification (ID) Laws*, 1 STATS. & PUB. POL. 46 (2014); Stephen Ansolabehere & Eitan Hersch, *ADGN: An Algorithm for Record Linkage Using Address, Date of Birth, Gender, and Name*, 4 STATS. & PUB. POL. 1 (2017); M.V. Hood III & Charles S. Bullock III, *Worth a Thousand Words? An Analysis of Georgia's Voter Identification Statute*, 36 AM. POL. RSCH. 555 (2008).

II. Turning to the Shadow Literature⁴⁵

Part II presents and discusses the methodology and results from expert reports, or the “shadow literature,” of experts retained in voter ID litigation cases in Texas and Alabama.

A. Texas

In May 2011, Texas enacted Senate Bill 14 (“SB 14”) mandating that in-person voters present a voter ID.⁴⁶ Soon thereafter, a group of plaintiffs, including a Democratic member of Congress, the U.S. Department of Justice, and several civil rights organizations, filed suit in federal court, alleging SB 14 had a discriminatory effect on voters of color.⁴⁷ The plaintiffs retained Dr. Stephen Ansolabehere, a political scientist from Harvard University who has consulted on several election-related lawsuits, to determine if Black and Hispanic registered voters are less likely to possess voter ID than white registered voters.⁴⁸

Dr. Ansolabehere was granted access to the Texas Election Administration Management System, which contains a list of registered voters, to determine which registered voters lacked an acceptable identification under SB 14.⁴⁹ Dr. Ansolabehere used data provided by Catalist, a data utility company, to predict the race of each registered voter.⁵⁰ Dr. Ansolabehere constructed an algorithm using identifiers, such as address, date of birth, gender, and name, to match registered voters to the Texas Department of Public Safety identification database and to federal databases that issued acceptable photo IDs under SB 14.⁵¹ This matching process produced a “No Match” list, which

45. Shadow literature refers to literature developed by expert testimony during litigation. Emily Rong Zhang, *Questioning Questions in the Law of Democracy: What the Debate Over Voter ID Laws’ Effects Teaches About Asking the Right Questions*, 69 UCLA L. REV. 1, 18 (2020).

46. S.B. 14, 82d Gen. Assemb., Reg. Sess. (Tex. 2021).

47. *Veasey v. Perry*, 71 F. Supp. 3d 627, 632 (S.D. Tex. 2014). Though the case was subsequently affirmed, vacated, remanded, and dismissed in part, the Fifth Circuit affirmed the district court’s ruling that SB 14 violated Section 2 of the Voting Rights Act. *See Veasey v. Abbott*, 830 F.3d 216, 272 (5th Cir. 2016); *Veasey v. Abbott*, 888 F.3d 792, 796 (5th Cir. 2018). The district court’s ruling was based largely on Dr. Ansolabehere’s report. *Veasey*, 71 F. Supp. at 663. *See also* Mary Kate Sexton, *Identity Crisis: Veasey v. Abbott and the Unconstitutionality of Texas Voter ID Law SB 14*, 37 B.C. J. L. & SOC. JUST. 75, 75 (2016).

48. *See* Declaration of Dr. Stephen Ansolabehere at 1–7, *Veasey v. Perry*, No. 2:13-cv-193 (S.D. Tex. filed Sept. 16, 2014). Note that Dr. Ansolabehere sometimes uses the term “Anglo” instead of “white.”

49. *Id.* at 8.

50. *Id.* at 3, 11.

51. *Id.* at 24–27.

identified registered voters who lacked an acceptable voter ID.⁵² Dr. Ansolabehere then divided the number of white, Black, and Hispanic voters on the No Match list by the total number of white, Black, and Hispanic registered voters, which produced the percentage of white, Black, and Hispanic voters who lack voter ID.⁵³

The results from the No Match list revealed a significant racial disparity in voter ID possession rates; 3.2% of white registered voters lacked an acceptable voter ID, compared to 5.2% of Hispanic and 6.3% of Black voters.⁵⁴ These results are largely consistent with a survey of registered Texas voters, which found that 2.1% of white voters, 4.9% of Black voters, and 6.8% of Hispanic voters lacked valid voter IDs.⁵⁵ However, not all voters who lack an ID are prevented from voting; voters who are 65 years or older can vote by mail without an ID, and those with a federally approved disability may apply and qualify for an exemption from the ID requirement.⁵⁶ Therefore, Dr. Ansolabehere coded those that qualified for these exemptions as having an ID, because their lack of voter ID did not prevent them from voting.⁵⁷ Consequently, the percentage of registered voters who lack ID, but qualify for an exemption, decreases to 2.0% of white, 4.0% of Hispanic, and 4.8% of Black registered voters.⁵⁸ However, these figures still do not reveal how many voters are impacted by SB 14 because the analysis includes all registered voters, not just likely voters.⁵⁹ Dr. Ansolabehere analyzed voters who voted in both the 2010 and 2012 elections, because the voter ID law was not in effect these years.⁶⁰ Among these voters, the racial disparity is even smaller.⁶¹ Only 1% of white, 2.1% of Black, and 1.6% of Hispanic voters who voted in the 2010 election did not have an acceptable voter ID.⁶² In 2012, 0.9% of white, 2.5% of Black, and 1.5% of Hispanic voters who voted in 2012 did not have an acceptable ID.⁶³

52. *Id.* at 35.

53. *Id.* at 93.

54. *Id.* at 12.

55. Expert Report of Matt Barreto & Gabriel Sanchez at 19, *Veasey v. Perry*, No. 2:13-cv-00193 (S.D. Tex. filed June 27, 2014).

56. Declaration of Dr. Stephen Ansolabehere, *supra* note 48, at 8, 39.

57. *See id.* at 40.

58. *Id.* at 99.

59. *See* discussion *infra* Part I.B. (discussing the importance of examining likely voters).

60. *See* Declaration of Dr. Stephen Ansolabehere, *supra* note 48, at 98. *See also* Shawn Syed, *The Story of Texas SB14: A Legal Lazarus*, WM. & MARY L. SCH., ELECTION L. SOC'Y (DEC. 3, 2018) (discussing that SB 14 was not in effect in 2010 or 2012).

61. *See* Declaration of Dr. Stephen Ansolabehere, *supra* note 48, at 98.

62. *Id.*

63. *Id.*

B. Alabama

In December 2016, a group of civil rights organizations sued the state of Alabama over the state's voter ID law, House Bill 19.⁶⁴ The plaintiffs retained Dr. Bernard Siskin, an economist with previous experience in voter ID litigation, to determine whether Black and Hispanic voters were less likely to possess a voter ID than white voters under Alabama's voter ID law.⁶⁵ Dr. Siskin began by looking for exact matches between the Alabama voter rolls and the databases listing those with state-issued IDs that are acceptable as a voter ID.⁶⁶ Rather than only looking for exact matches between the databases, Dr. Siskin employed a matching process which includes non-exact matches.⁶⁷ Specifically, Dr. Siskin counted non-exact matches a match even when they differed slightly in spelling, included a hyphen in one database but not the other, and when it appeared one database used a person's maiden name and another used their married name.⁶⁸ The inclusion of non-exact matches was important because poll workers have the discretion to accept voters' IDs that were not perfect matches to their registration record.⁶⁹ This process produced a list of registered voters who were not in possession of a state-issued voter ID.⁷⁰

Dr. Siskin then supplied the list of voters without a valid state ID to the U.S. Department of State, U.S. Department of Defense, and U.S. Department of Veteran Affairs to determine if any of those voters possessed an ID issued by those offices, which would be valid under the voter ID law.⁷¹ Voters who possessed one of those forms of identification were then removed from the list.⁷² Dr. Siskin then cleaned the list by removing duplicates.⁷³ Consequently, Dr. Siskin found 1.37% of white registered voters in Alabama lacked a valid ID, compared to 2.44% of Black voters and 2.29% of Hispanic registered voters.⁷⁴

64. Greater Birmingham Ministries v. Merrill, 284 F. Supp. 3d 1253 (N.D. Ala. 2018).

65. Report of Bernard R. Siskin at 2-3, Greater Birmingham Ministries v. Alabama, No. 2:15-cv-02193-LSC (N.D. Ala. filed Sept. 9, 2017).

66. Report of Bernard R. Siskin at 1, Greater Birmingham Ministries v. Alabama, No. 2:15-cv-02193-LSC (N.D. Ala. filed Sept. 9, 2017).

67. *Id.* at 11.

68. *Id.*

69. *Id.* at 7-9.

70. *Id.* at 11.

71. *Id.* at 14.

72. *Id.* at 15.

73. *Id.* at 15-16.

74. *Id.* at 29; *see also* Greater Birmingham Ministries v. Merrill, 284 F. Supp. 3d 1253, 1269 (N.D. Ala. 2018). However, Dr. Siskin's report is limited in that it considers all registered voters, not active voters. Active voters refer to those who the Board of Registrars can confirm reside at the

III. Discussion and Implications of the Shadow Literature

In the past two decades, a voluminous body of literature has emerged on how voter ID law might disproportionately burden voters of color.⁷⁵ To date, scholars have traditionally taken one of two approaches. The first, which attempts to quantify a disproportionate burden by examining voter turnout rates in states with voter ID laws, has produced mixed results.⁷⁶ The second approach, which surveys the electorate to determine ID possession rates by race, strongly suggests voters of color are disproportionately burdened.⁷⁷ However, in addition to reaching seemingly contradictory conclusions, both approaches suffer from significant methodological flaws and limitations.⁷⁸

In recent years, however, a third strand of research has emerged: shadow literature. Despite all the attention voter ID laws receive, both in academia and in the media, this shadow literature has been the subject of only three academic articles. Two of those articles focus on the methodology employed in specific cases⁷⁹ and the third, while published in an academic journal,⁸⁰ was not allowed to be admitted into evidence during a challenge to Georgia's voter ID law because of several methodological flaws.⁸¹ The shadow literature has been referenced in a handful of other scholarly works, but their methodology and findings are not discussed in-depth.⁸²

This Comment is the first piece of scholarly writing focusing on both methodology and results. As highlighted in Part II, this Comment's synthesis and analysis reveals that while "likely" voters of color are less likely to possess a voter ID than white likely voters, the gap is slim.⁸³ These results find that

address listed on their voter file. See Rep. of Dr. Bernard R. Siskin, *supra* note 66, at 3–4.

75. See *infra* Part I.

76. See *infra* Part I.

77. See *infra* Part I.

78. See *infra* Part I.

79. Marker, *supra* note 44; Ansolabehere & Hersh, *supra* note 44.

80. See Hood III & Bullock III, *supra* note 44.

81. Order Granting the State Defendants' 216 Motion to Exclude Reports and Testimony of Plaintiffs' Experts at 47–48, *Common Cause/Georgia v. Billups*, No. 4:05-CV-0201-HLM (N.D. Ga. Sept. 6, 2007) ("Similarly, the Court finds that the 'Worth a Thousand Words' analysis is not reliable and admissible under Daubert [...] [T]he Court finds that the 'Worth a Thousand Words' analysis is not reliable. The Court therefore grants the Motion to Exclude.").

82. See Kelly S. McConville, Lynne Stokes & Mary Gray, *Accumulating Evidence of the Impact of Voter ID Laws: Student Engagement in the Political Process*, 5 *STATS. & PUB. POL.* 1, 2 (2018) (discussing how voter ID ownership rates are used in legal challenges to voter ID laws); Zhang, *supra* note 45, at 18–22 (discussing how many voters in Texas generally lack ID based on Dr. Ansolabehere's report); Stewart III, *supra* note 35, at 25 (discussing the general conclusions on the racial breakdown of those who lack ID).

83. See *infra* Part II.

while probable voters of color are less likely to possess a voter ID than probable white voters, the difference in possession rates between white voters and voters of color is slim.⁸⁴

To be clear, this Comment does not purport to claim that voter ID laws are racially neutral. The shadow literature clearly finds likely voters of color are less likely to possess a voter ID than white likely voters.⁸⁵ Moreover, race plays a role in the enactment and implementation of voter ID laws.⁸⁶ Rather, this Comment's purpose is to synthesize a new form of evidence and introduce it to the ongoing debate surrounding voter ID laws.

Beyond furthering our understanding of voter ID laws, the findings presented in this Comment may help explain recent legislative activity. For two decades, Democratic leaders and legislators have opposed voter ID laws, alleging they amount to voter suppression.⁸⁷ Yet in the summer of 2021, Democrats suddenly shifted their position, expressing a willingness to enact voter ID laws.⁸⁸ According to political commentators and reporters, this about-face is driven by Democrats' desire to reach a compromise on voting reform legislation.⁸⁹ Such a compromise is politically logical only if voter ID laws do not significantly burden voters of color.⁹⁰ As demonstrated in Part II, while voters of color are less likely to possess voter ID than white voters, the gap is slim.

Conclusion

This Comment has synthesized the shadow literature, expert reports

84. See *infra* Part II.

85. Declaration of Dr. Stephen Ansolabehere, *supra* note 48; Report of Bernard R. Siskin, *supra* note 66.

86. See Bentele & O'Brien, *supra* note 15; see McKee, *supra* note 18; see Hicks, McKee & Smith, *supra* note 18.

87. See Cillizza, *supra* note 1 (“Democrats say it’s a not-so-subtle attempt to discourage minority voters to cast a ballot.”); see Condon, *supra* note 10; see Valentino & Neuner, *supra* note 10, at 333 (“Civil rights leaders have rallied, loudly characterizing them [voter ID laws] as a Jim Crow style war on Black voter access to the ballot.”).

88. See Cleve R. Wootson Jr. & Mike DeBonis, *Democrats Signal a Shift Toward Accepting Voter ID Laws*, WASH. POST (June 22, 2021, 7:27 PM), https://www.washingtonpost.com/politics/democrats-voter-id/2021/06/22/0cd24d54-d36e-11eb-ae54-515e2f63d37d_story.html [<https://perma.cc/7STC-GD95>].

89. See Jonathan Weisman & Nick Corasaniti, *Why Democrats Are Reluctantly Making Voter ID Laws a Bargaining Chip*, N.Y. TIMES (Sept. 17, 2021), <https://www.nytimes.com/2021/06/23/us/politics/democrats-voter-id-laws.html> [<https://perma.cc/HH4W-L9YE>].

90. See Chryl Laird & Ismail White, *Why So Many Black Voters Are Democrats, Even When They Aren't Liberal*, FIVETHIRTYEIGHT (Feb. 26, 2020, 3:04 PM), <https://fivethirtyeight.com/features/why-so-many-black-voters-are-democrats-even-when-they-arent-liberal/> [<https://perma.cc/F8LB-5U94>].

which matches registered voters to state and federal ID databases to determine racial disparities in voter ID possession rates, that receives scant attention in the ongoing debate over voter ID laws. Going forward, those involved on either side of the voter ID debate would do well to consider this form of evidence before. Although there is still much we do not know about voter ID laws, it seems there will be ample opportunity for further analysis. A flurry of voter ID laws have recently been enacted and introduced,⁹¹ and litigation surrounding existing voter ID laws is ongoing.⁹² The evidence introduced in this Comment lends credence to those concerned about the potential disparate impact of voter ID laws, but at the same time demonstrates the racial gap in ID possession rates is slim. These findings contribute to the ongoing legal and political debate surrounding voter ID laws.

91. See *Voting Laws Roundup: July 2021*, *supra* note 2.

92. See *Holmes v. Moore*, 840 S.E.2d 244 (N.C. Ct. App. 2020); Gary D. Robertson, *No Immediate Ruling as North Carolina Voter ID Trial Ends*, AP NEWS (Apr. 30, 2021), <https://apnews.com/article/north-carolina-race-and-ethnicity-trials-voting-rights-government-and-politics-0131e8afe01e6d0e763ce6ece17792ab> [<https://perma.cc/TJ37-XTVM>]; see Amended Complaint for Injunctive Relief & Declaratory Judgment, *League of Women Voters v. Thurston*, No. 60CV-21-3138 (Cir. Ct. Pulaski Cnty., Ark. filed July 1, 2021), <https://www.democracymocket.com/wp-content/uploads/sites/45/2021/05/2021-07-01-Arkansas-Voter-Suppression-Amended-Compl.-filed.pdf> [<https://perma.cc/G2K2-DQS4>].